

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

ALICE H. ALLEN, et al.,

Plaintiffs,

v.

DAIRY FARMERS OF AMERICA, INC.,
DAIRY MARKETING SERVICES, LLC,
and DEAN FOODS COMPANY,

Defendants.

Civil Action No. 5:09-CV-00230

**DECLARATION OF JOHN GORTON IN SUPPORT OF MOTION TO INTERVENE
AND OBJECTION TO APPROVAL OF PROPOSED CLASS SETTLEMENT**

I, John Gorton, make the following declaration based upon personal knowledge of the matters set forth here.

1. I am a 1971 graduate of the United States Naval Academy and served as an officer on nuclear powered submarines. I remained on active duty in the Navy until 1980. I am also a business engineer and conducted design analysis for the Navy.

2. In 1980, my wife and I began farming land that we own in Sheldon, Vermont. I operate the farm along with my wife and son. My wife's family is extensively involved in dairy farming in Franklin County, Vermont.

3. We began operations with 30 milking cows and now have approximately 100 milking cows and 190 total livestock. We farm approximately 250 acres of land.

4. Our farm produces approximately 2,000,000 lbs of milk per year. Our milk is picked up daily and is usually shipped to one of three plants: (1) a cheese plant in Middlebury,

Vermont, (2) the St. Albans Creamery, and/or (3) the Hood plant in Boston. All of my milk is mixed with the milk of other producers and pooled in Federal Order 1.

5. I am a member of the Dairy Farmers of America Cooperative ("DFA") and have been since 1999. Previously, I was a member of the Eastern Milk Producers, which became Milk Marketing Inc (MMI), which became a part of DFA. I served as President of Enosburg Local when I was with Eastern and MMI. Additionally, I served on the Audit Committee of Eastern and was a delegate of MMI in connection with the establishment of DFA. Since DFA was formed, I have been a delegate attending each of DFA's annual meetings representing Franklin County, Vermont. In addition, as a delegate I frequently attend the quarterly Leadership Conferences held jointly by DFA and Dairylea Cooperatives.

6. I am a strong supporter of coops in general and of DFA. Milk has to get processed daily which puts pressure on finding a home for milk daily. The DFA and Dairy Marketing Services ("DMS") balance the market for milk distributing the milk to various plants. Milk is sold under four classifications – Class I being fluid milk which brings the highest price, down to Class IV which is milk sold for powder at the lowest price. As part of balancing the market, the coop always looks to fill Class I sales first before selling milk at lower classes. The coop ensures that my milk gets picked up and sold daily at the best available price. By pooling resources, the coop spreads the cost of balancing the region's milk supply fairly over all farmers in the region.

7. Also, by pooling our resources through coops and DMS, dairy farmers are able to share hauling costs which could otherwise disadvantage hard to get to farmers. Without a coop, an averaged sized farm off the beaten path might have a hard time getting a handler willing to pick up its milk on a consistent and timely basis.

8. The coop also provides a number of other valuable and important services such as insurance programs, financing, risk management, and group purchasing programs for discount supplies.

9. Finally, the coop negotiates the over order premiums paid to farmers. The base price of milk is set by the government. Coops exist in part to negotiate a premium above the established minimum. This is critical in today's milk marketing economy. The government mandated minimum price is several dollars below the cost of production and with milk production overall 1-2 percent above demand, balancing costs are significant. Without over order premiums, I can not obtain a milk price that meets cost of production.

10. Being a part of a coop to ensure that my milk is picked up daily at the best possible price offers tremendous security.

11. The power of DMS is the power of farmers banding together to deal with large buyers like Dean and keeps Dean from inducing farmers to work against each other by undercutting the market or pushing out smaller hard to access farms.

12. The integrity of the coop is of paramount importance to me and the health of the dairy industry.

13. I have seen Dean's Proposed Settlement with the Plaintiffs in this lawsuit and believe it is a bad deal for dairy farmers and in particular the dairy farmers like me who market our milk through DMS. Primarily, I believe that the proposal is bad because it attacks the integrity and strength of the coop by requiring DMS to find a new home for up to 20% of its milk production, or 60 million pounds of milk per month, and essentially requiring certain farms to terminate their relationships with the coops if they want to sell any of these 60 million pounds to Dean. If any farmers leave the coop, it will increase the costs to the remaining members and

weaken the coop. More importantly it will allow the farmers who leave the coop to collaborate with Dean Foods to avoid paying their share of balancing costs on 60 million pounds milk per month. In effect, Dean Foods will force the coop to assume 100% of the balancing costs for the region's milk supply despite losing 20% of its sales.

14. Also, when Dean Foods buys milk from the coop, part of the price is administrative costs. When Dean Foods buys milk from independents, it absorbs those administrative costs, but does not have to account for them as part of its "milk price". By shifting balancing cost away from themselves and independent farmers (onto coop farmers) and shifting away admin costs, Dean Foods can pay independent farmers slightly more than the coop pays its farmers, while creating the appearance of "buying milk cheaper". Dean Foods can then use this "buying milk cheaper" claim to force the coop to lower its over order premium. Once Dean Foods can force the coop to lower over order premiums, all other customers of the coop will demand the same treatment, thus lowering the price for all milk for all farmers in the Northeast Region. If Dean decides what it believes is the "competitive market price" for milk, per the settlement, I do not see how Dean would end up offering more than what it currently pays and I see no proof to support that claim.

15. I certainly do not believe that this deal was negotiated by anyone who represents my interests, or the interest of any farmer that I know of. This causes me to have serious concerns as to whether the class representatives and their lawyers are really looking out for the interests of the dairy farmers like us who market their milk through DMS.

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I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on January, 15, 2011, in Fairfield, Franklin County, Vermont.


Grant John Gorton